

RESOLUTION NO. 15-029

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. UA15-0007 TO
ALLOW FOR THE SALE OF ALL TYPE OF ALCOHOL FOR AN EXISTING
CONVENIENCE STORE LOCATED AT 148 W. CALAVERAS BLVD.**

WHEREAS, on July 24, 2015, an application was submitted by Charanjit Sandhu, 148 W. Calaveras Blvd. Milpitas, CA 95035 (Applicant”) for a Conditional Use Permit Amendment to allow the addition of sale of all types of alcohol to an existing 1,015 square foot convenience store located at 148 W. Calaveras Blvd. (“Project”). The property is located within General Commercial Zoning District (APN: 22-24-037).

WHEREAS, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this Project exempt under CEQA.

WHEREAS, on August 12, 2015, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

WHEREAS, the all previous planning entitlements for the operations of a restaurant with beer and wine sales shall be rescinded and superseded by the adoption of this Resolution.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The proposed Project is categorically exempt from further CEQA review under Section 15301 (Existing Facilities) of the CEQA Guidelines. The project is a request to permit the addition of the sale of all types of alcohol to an existing convenience store and proposes no physical changes to the site or building.

Section 3: Any and all provision of Conditional Use Permit Amendment No. UP11-0014 approved by the City of Milpitas Planning Commission on July 13, 2011 is hereby expressly superseded by the adoption of this Resolution and the Prior Conditional Use Permits and all other prior approvals inconsistent with this Resolution shall be considered null and void and have no legal effect whatsoever.

Section 4: Conditional Use Permit (Section XI-10-57.04(F)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit Amend No. UA15-0007:

- i. *The project will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

As discussed in detail in the staff report and herein, the subject property is not in a crime reporting district. As conditioned, the applicant shall be required to provide the following measures:

- Responsible Alcohol Training - The operator shall be responsible for ensuring that all employees receive “Responsible Alcoholic Beverage Service” training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request.
- Litter and Graffiti Prevention - Pick up litter and abate graffiti on a daily basis.
- Security Video Surveillance System - Install video surveillance camera(s) to monitor and provide complete coverage of the parking areas. Prior to occupancy, the applicant shall be detail and manufacturer’s specification for a video surveillance security system for Police Department review and approval. Video recordings shall be retained for 30 days. The applicant shall make video recordings available to law enforcement upon request.
- No Loiter Signs: Applicant will display information signs to remind customers not to loiter and prohibit any drinking of alcohol on the property.

- ii. *The proposed use is consistent with the Milpitas General Plan.*

As discussed in detail in the staff report and herein, the project is consistent with the General Commercial designation in that the land use provides for the general commercial needs of the surrounding neighborhood. The project is an existing convenience store selling convenience goods, alcoholic beverages and tobacco products. The project also provides opportunity for business retention and encourages economic pursuits for small businesses which are consistent with the following General Plan Policies:

- Policy 2.a-I-3 - Encourage economic pursuits which will strengthen and promote development through stability and balance.
- Policy 2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.

- iii. *The use is consistent with the Milpitas Zoning Ordinance.*

As discussed in detail in the staff report and herein, the proposed Project is consistent with the Milpitas Zoning Ordinance based on the following:

- a) With respect to land use, the General Commercial Zoning District allows for general retail as a permitted use and conditionally permits the sale of alcoholic beverages with Planning Commission approval of a conditional use permit. Furthermore, the Project

is consistent with purpose and intent of the General Commercial Zoning District in that the proposed convenience items and alcoholic beverage sales would serve the general commercial needs of the community. The project will not create any objectionable noise or odors.

- b) With respect to development standards, the proposed Project complies with setback, height, floor area ratio as described in the Table 1 below:

Table 1:
Summary of Development Standards

	Standard	Existing	Complies?
<u>Setbacks</u> (Minimum)			
Front	0 feet	175'	Yes
Side Yard	0 feet,	220' and 325'	Yes
Rear	0 feet	30'	Yes
<u>Floor Area Ratio</u> (Maximum)	0.50	0.13	Yes
<u>Building Height</u> (Maximum)	None	18'	Yes

- c) With respect to compliance with parking requirements, the project complies with the city's parking requirements in that the proposed retail use requires five (5) spaces and does not require additional parking beyond the five (5) parking spaces that were allotted to the tenant space. Furthermore, the shopping center has a recorded reciprocal parking agreement, which allows parking to be used by all tenants of the four parcels. Currently, the project site provides a total of 163 parking spaces.

Section 5: Department of Alcoholic Beverage Control Findings pursuant to Business and Profession Code Section 23958.4: The Planning Commission makes the following findings based on the evidence in the public record in support of Business and Profession Code Section 23958.4:

- i. Based on the staff report and as described herein, the Project will not be detrimental to the surrounding area and serves the public convenience or necessity because:
- The existing convenience store is not located within a crime reporting district.
 - There are no existing violations against the property.
 - The existing convenience store is located in the general commercial zone and is surrounded by other commercial uses. The project is a compatible land use and adds to the variety of the Calaveras Square Shopping Center that does not have any general retail stores.
 - The project is not located within 100-feet of residential homes and is more than 600-feet away from any school, Public Park, or religious facility and therefore will not be detrimental or injurious to property, improvements or disturb the quiet and peaceful enjoyment of residential homes.

- As conditioned, the applicant shall be required to obtain training for responsible alcohol serving and incorporate measures such as video surveillance and signage to discourage loitering.

Section 6: This Resolution shall repeal, rescind and supersede all prior Conditional Use Permits issued for the subject property. Additionally, this Resolution shall repeal, rescind and supersede all prior City approvals related to the subject property that is inconsistent with this Resolution.

Section 8: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 15-029 approving Conditional Use Permit Amendment No. UA15-0007 for the sale of all types alcohol located at 148 W. Calaveras Blvd., based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on August 12, 2015.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on August 12, 2015, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Larry Ciardella				
Gurdev Sandhu				
Rajeev Madnawat				
Demetress Morris				
Hon Lien				
Ray Maglalang				
Zeya Mohsin (alternate)				

EXHIBIT 1**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT AMENDMENT NO. UA15-0007****General Conditions**

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Conditional Use Permit Amendment No. UA15-0007 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Department. **(P)**
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit. **(P)**
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 1. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit. **(P)**
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner. **(P)**
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**

6. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit. **(P)**
7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the Permittee may file a protest has begun under California Government Code Section 66020(d)(1). **(P)**
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to City. There is no vesting of any fees or charges with the adoption of this Resolution. **(P)**
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution. **(P)**
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit. **(P)**
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City,

and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. **(P/CA)**

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code. **(P)**
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable. **(P)**
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on (August 12, 2015), in accordance with these Conditions of Approval. Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**
16. Compliance with Fire Department and CA Fire Code. The Project shall comply with the requirements of the Milpitas Fire Department and the CA Fire Code. Changes to the site plan and/or building(s) requires review and approval by the Fire Department. **(F)**
17. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**

Conditional Use Permit

18. Responsible Alcohol Training. Permittee shall be solely responsible and liable for ensuring that all employees receive "Responsible Alcoholic Beverage Service" training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for copy and inspection upon City request. **(P) (PD)**
19. Litter and Graffiti Prevention. Permittee shall at all times maintain the subject property in a clean and orderly manner, free of litter and graffiti. All litter and graffiti shall be removed and abated on a daily basis. **(P)**

20. Security Video Surveillance System. Prior to issuance of any occupancy, Permittee shall install video surveillance camera(s) to monitor and provide complete coverage of the subject property including parking areas. The detail and manufacturer's specification for a video surveillance security system shall be reviewed and approved by the Milpitas Police Department. Video recordings shall be retained for a minimum of thirty (30) days and subject to immediate review and copy by any law enforcement upon request. **(P) (PD)**
21. No Loitering Signs. Permittee shall install "No Loitering" signs throughout the subject property to remind customers not to loiter and shall prohibit any drinking of alcohol on the property. Permittee shall be solely responsible to enforce the "No Loitering" and "No Drinking" on the subject property. **(P) (PD)**
22. Six Month Review: The applicant shall come back to the Planning Commission 6 months after improvements have been installed to review compliance with conditions of approval. **(PC)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney